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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

REGENTS OF UNIVERSITY OF
CALIFORNIA and JANET NAPOLITANO, in
her official capacity as President of the
University of California,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY and ELAINE
DUKE, in her official capacity as Acting
Secretary of the Department of Homeland
Security,

Defendants.

No. 3:17-cv-05211-WHA
No. 3:17-cv-05235-WHA
No. 3:17-cv-05329-WHA
No. 3:17-cv-05380-WHA
No. 3:17-cv-05813-WHA

**DEFENDANTS' EMERGENCY MOTION
TO STAY DISCOVERY AND RECORD
COMPLETION IN ALL DACA CASES**

Judge: Honorable William Alsup
Hearing: None Requested, or Thursday,
November 30, at 8:00 a.m. or as soon as
counsel may be heard
Courtroom 8

**NOTICE OF MOTION AND MOTION
TO STAY DISCOVERY AND RECORD COMPLETION IN ALL DACA CASES**

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:
PLEASE TAKE NOTICE that, on Thursday, November 30, 2017, at 8:00 a.m., at 450 Golden Gate Avenue, San Francisco, California, Courtroom 8, or sooner to the extent the Court can accommodate this emergency request, Defendants in the related DACA matters (hereinafter, “DACA cases”) will and hereby move this Court for an Order staying discovery and the requirement that they complete the administrative record pending an application to the Supreme Court. The parties have stipulated to a shortened briefing schedule on this motion whereby Plaintiffs’ response will be due no later than noon PST on Monday, November 20, 2017, and Defendants will forego a reply brief. To further expedite the Court’s consideration of this request, Defendants are prepared to forego a hearing and have this Court rule on the submitted papers. Because the Defendants may seek Supreme Court review as soon as Monday, November 20, Defendants request a ruling by that date.

This motion is made based on the All Writs Act, 28 U.S.C. § 1651; Federal Rule of Appellate Procedure 8, which authorizes the District Court to stay an action, order, or judgment, pending resolution of an appeal; Supreme Court Rule 23.3, which provides that, absent extraordinary circumstances, a stay be sought first in an appropriate lower court; the accompanying memorandum and proposed order; all pleadings and filings in these matters; and such oral argument as the Court allows, if the Court deems oral argument necessary.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On September 21, 2017, this Court held a Case Management Conference at which it ordered that discovery would take place in these five related actions; it subsequently entered a Case Management Order permitting discovery. *See* Case Management Order for All DACA Actions in this District, ECF No. 49.¹ On October 17, 2017, this Court issued an Order to Complete the Administrative Record, ECF No. 79 (“Order”). That Order requires Defendants to

¹ References to docket numbers herein refer to the docket in Case No. 17-cv-05211-WHA. All DACA Cases (Nos. 17-5211, 17-5235, 17-5329, 17-5380, 17-5813)
EMERGENCY MOTION TO STAY

1 “complete” the administrative record in various respects, including through the disclosure of
2 privileged documents, and requires the submission of an additional privilege log and the
3 submission of additional documents identified as privileged for in-camera review. This Court
4 then entered an Order to Compile Supplement Forthwith. *See* ECF No. 80.

5 Defendants filed a petition for a writ of mandamus with the Ninth Circuit on October
6 20, 2017. *See* ECF No. 86. On October 24, 2017, the Ninth Circuit issued an order staying both
7 discovery and record supplementation in the district court. That stay was lifted when the Ninth
8 Circuit issued its order denying defendants’ mandamus petition on November 16, 2017. Shortly
9 thereafter, this Court issued an Order requiring the Defendants to complete the administrative
10 record by November 22, 2017, at Noon PST. ECF No. 188.

11 On November 17, 2017, Defendants filed a motion for a stay with the Ninth Circuit (9th
12 Cir. Stay Motion, attached hereto as Ex. A). That motion indicated that Defendants “will file an
13 application seeking a further stay of all discovery and record expansion pending a petition for
14 mandamus or a writ of certiorari from the Supreme Court no later than November 20, 2017.” *Id.*
15 The next day, the Ninth Circuit entered a scheduling order requiring a response to the stay
16 motion by noon PST on Monday, November 20, 2017, and an optional reply by 5:00 p.m. PST
17 on Monday, November 20, 2017. *See* Ninth Circuit Order, attached hereto as Ex. B. The court
18 also asked the parties to address “whether the court has jurisdiction to grant a stay of
19 proceedings, or whether the motion for a stay should instead be filed in the district court.” Ex. B
20 at 2 (citing *Ellis v. U.S. District Court*, 360 F.3d 1022 (9th Cir. 2004) (en banc)).

21 While Defendants continue to pursue a stay before the Ninth Circuit, Defendants are also
22 now seeking relief from this Court. In accordance with Supreme Court Rule 23.3, Defendants
23 respectfully request that this Court stay its Case Management Order to the extent that Order
24 requires the parties to engage in discovery (ECF No. 49), as well as its Order to Complete the
25 Administrative Record (ECF No. 79), as modified by its Order to Compile (ECF No. 80) and a
26 subsequent Order to File the Completed Record and Propose Schedule (ECF No. 188), pending
27 the Supreme Court’s resolution of Defendants’ forthcoming petition. In the alternative, and if
28 this Court does not otherwise grant the relief being requested herein or the relief being requested

by Plaintiffs in their separate stay motion, *see* ECF No. 190, Defendants request either a stay pending the Supreme Court's disposition of a stay application to be presented to the Supreme Court, or at minimum a stay until the end of the day on November 27, 2017, in order to allow the Supreme Court to orderly determine whether it wishes to grant an administrative stay while it considers Defendants' application. Defendants will provide this Court with the copy of their Supreme Court filing and advise this Court promptly of any developments.

Defendants are aware that Plaintiffs have filed a separate motion to stay and will respond to that motion no later than noon PST on Monday, November 20, 2017. Defendants may also need to seek additional relief from this Court because they will not be in a position to file a completed administrative record by November 22, 2017, but will seek any such relief via separate motion if the Court does not otherwise provide relief pursuant to the parties' pending stay motions.

Dated: November 19, 2017

Respectfully submitted,

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